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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,045	01/08/2004	Raman Patel	TEK-B	6070

7590 07/26/2005

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EXAMINER

NUTTER, NATHAN M

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/754,045

Applicant(s)

PATEL ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0104</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 11/030,243, Patel et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the specific polymer to which the thermoplastic vulcanizate, as recited herein, would be embraced by the resins of the presently claimed invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coran et al (USPN 4,104,210), Coran et al (USPN 4,141,878), both newly cited, or Shimizu et al (USPN 5,310,800), cited by applicants.

The reference to Coran et al (USPN 4,104,210), newly cited, teaches the production of a thermoplastic vulcanizate (TPV), essentially identical to that produced herein as regards composition and constitutional parameters, that may be employed with other polyolefin resins, as herein claimed. Note the paragraph bridging column 1 to column 2, and the paragraph bridging column 2 to column 3 for the broad concept, and the production of the TPV. Further, note column 3 (lines 27-53) for the specific particle sizes of the dispersed phase, and the compositional limitations including the recitations in claims 4, 6-8, 14, 16-18, 23, 25-27 and 29. Further, note column 5 (lines 14-46) for the rubber constituent. At column 6 (lines 51 et seq) the reference shows the employment of extender oils. The reference teaches broadly the employment of the resin blend composition with other thermoplastic polyolefin resins at column 7 (lines 11-21). Surely, this broad recitation would embrace homopolymers, as well as copolymers. Subsequent employment of the resin blend composition in rotational molding operations would have surely been an obvious modification to an artisan.

The reference to Coran et al (USPN 4,141,878), newly cited, teaches the production of a thermoplastic vulcanizate (TPV), essentially identical to that produced herein as regards composition and constitutional parameters, that may be employed with other polyolefin resins, as herein claimed. Note column 1 (line 50) to column 2 (line

44), and the paragraph bridging column 2 to column 3 for the broad concept, and the production of the TPV. Further, note column 2 (lines 38-44) for the specific particle sizes of the dispersed phase, and the compositional limitations including the recitations in claims 4, 6-8, 14, 16-18, 23, 25-27 and 29. Further, note column 5 (lines 14-46) for the rubber constituent. At column 4 (lines 19-43) the reference shows the employment of extender oils. The reference teaches broadly the employment of the resin blend composition with other thermoplastic polyolefin resins at column 6 (lines 28-40). This broad recitation would embrace homopolymers, as well as copolymers. Subsequent employment of the resin blend composition in rotational molding operations would have surely been an obvious modification to an artisan.

The reference to Shimizu et al (USPN 5,310,800), cited by applicants, teaches the production of a thermoplastic vulcanizate (TPV), essentially identical to that produced herein as regards composition and constitutional parameters, that may be employed with other polyolefin resins. Note column 5 (lines 36-64), column 6 (lines 35-39), and column 7 (lines 43-54) for the broad concept, and the production of the TPV. The particle sizes of the dispersed phase would be inherent in the TPV since it is produced identically as disclosed herein. Note column 5 (lines 36-49) for the compositional limitations. Further, note the many examples. At column 4 (lines 32-37) the reference shows the employment of extender oils. The reference teaches broadly the employment of the resin blend composition with other thermoplastic polyolefin resins at column 11, Example 3. This broad recitation would embrace homopolymers, as well

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as copolymers. Subsequent employment of the resin blend composition in rotational molding operations would have surely been an obvious modification to an artisan.

Claims 1-3, 5-7, 11-13, 15-17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coran et al (USPN 4,130,535), cited by applicants.

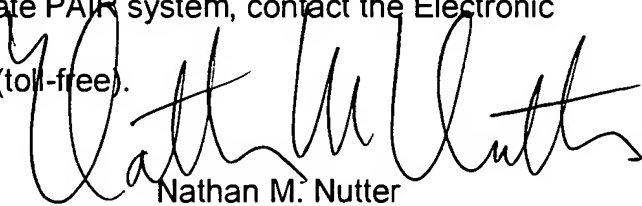
The reference to Coran et al (USPN 4,130,535), cited by applicants, teaches the production of a thermoplastic vulcanizate (TPV), essentially identical to that produced herein as regards composition and constitutional parameters, that may be employed with other polyolefin resins, as herein claimed. Note column 2 (lines 1-19) and column 2 (line 53) to column 3 (line 26) for the broad concept, and the production of the TPV. Further, note column 5 (lines 7-47) for the rubber and polyolefin constituents. At the paragraph bridging column 5 to column 6, the reference shows the employment of extender oils. The reference teaches broadly the employment of the resin blend composition with other thermoplastic polyolefin resins at column 7 (lines 41-54). Surely, this broad recitation would embrace homopolymers, as well as copolymers. Subsequent employment of the resin blend composition in rotational molding operations would have surely been an obvious modification to an artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

23 July 2005